RECEIVED
AUG 20 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 82-125

SUPREME COURT OF THE UNITED STATES

FALL TERM, 1982

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE, and MARK JAY BAKER, an Individual/Real Party in Interest,

Respondents.

OPPOSITION TO PETITION FOR CERTIORARI

CRYSTAL C. SIMS
LEGAL AID SOCIETY OF ORANGE COUNTY
2700 North Main Street,
11th Floor
Santa Ana, CA 92701
(714) 835-8806
Attorneys for Respondent,
MARK JAY BAKER

TABLE OF CONTENTS

		Page
I.	STATEMENT OF CASE.	1
II.	PETITION IS PREMATURE	2
III.	NO IMPORTANT FEDERAL QUESTION IS PRESENTED	5
IV.	CONCLUSION.	8

TABLE OF AUTHORITIES

FEDERAL CASES	Page
Fay v. Noia (1963) 372 U.S. 391	4
In re Paris Air Crash of March 3, 1974 (9th Cir. 1980) 622 F.2d 1315.	7
Lockport v. Citizens for Community Action (1977) 430 U.S. 259 . . .	6
Parkam v. Hughes (1979) 441 U.S. 347 6	
Rice v. Sioux City Memorial Parks Cemetery (1955) 349 U.S. 70. . .	4
Weber v. Aetna Casualty & Surety Company (1972) 406 U.S 164 . . .	5
STATE CASES	
George Bay Mfg., Inc. v. Superior Superior Court (1981) 115 CalApp3d 217	7
Justices v. Atchison (1977) 19 Cal.3d 564.	7
Lange v. Schoettla (1896) 115 Cal. 388	7
People v. Medina (1972) 6 Cal.3d 484	2

STATUTES

California Code of Civil
Procedure, Section 377 . . . . 2,5,&7

RULES OF COURT

Supreme Court Rules,
Rule 17.1(c) 3

I

STATEMENT OF THE CASE

Petitioners are the heirs at law of decedent, CARL MARCUS CHANCELLOR, and are the Plaintiffs in the wrongful death action, Chancellor, et al. v. Mark Jay Baker, et al., Orange County Superior Court Case No. 31-51-00. Respondent and Defendant below, MARY (sic) JAY BAKER, is currently incarcerated in Tracy, California, after pleading guilty to felony murder charges arising out of the death of Petitioners' son.

The Respondent Orange County Superior Court granted Baker's motion for partial summary judgment as to the issue of punitive damages on February 10, 1982. This interlocutory order is not immediately appealable. (Petition, Exhibit "C", p. 42.) Petitioners have sought and have been denied extraordinary relief from all available state appellate courts.

Respondent will demonstrate that the petition at hand is jurisdictionally defective since the order appealed from is not a final decision on any federal question. Respondent will further show that no important federal question is presented as to the constitutionality of the California wrongful death statue, Code of Civil Procedure Section 377.

II

THE PETITION IS PREMATURE

All parties apparently agree that the order of Respondent Court denying Petitioners' claim for punitive damages is not a final appealable order. See Petition, Exhibit "C", p. 42. It is also clear that the denial without opinion of a prerogatory writ does not constitute a decision on the merits and is not res judicata or law of the case in California. People v. Medina (1972) 6 Cal.3d 484. Thus,

there has been no final decision by any state court as to the issue raised by the petitioners. No state appellate court has been given an opportunity to decide any issues presented by Petitioners' exercise of their rights to appeal any final judgment of the Respondent Court.

Petitioners invoke this Court's jurisdiction pursuant to Supreme Court Rules, Rule 17.1 (c) which provides for review:

> When a state court or a federal court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

The admitted posture of this case reveals that there has been no decision by any state court on an issue of federal

law. Petitioners justify the interlocutory relief sought from this Court on the basis of duplication of proof in the event of a reversal. Petition, pp. 8-9. However, it is well settled that certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. Fay v. Noia (1963) 372 U.S. 391. Certiorari should not be granted on the basis of these principles which are applicable only to the parties. Rice v. Sioux City Memorial Parks Cemetery (1955) 349 U.S. 70.

Thus, this Court should exercise its discretion to deny the petition as premature in order to allow the state appellate courts an opportunity to pass on any issues presented by an appeal from a final judgment of Respondent Court.

///

III

NO IMPORTANT FEDERAL QUESTION IS PRESENTED

Petitioners challenge California Code of Civil Procedure Section 377 on the basis that, as interpreted, such section denies them equal protection of the law. Respondent will demonstrate that the limitation on punitive damages is rationally related to a legitimate state interest in preventing excessive recoveries.

Wrongful death statutes are outgrowths and modifications of basic tort law designed to alleviate the harsh common law rule preventing the inheritance of a personal right. Weber v. Aetna Casualty & Surety Company (1972) 406 U.S. 164. The legislatures have wide discretion in passing laws that inevitably treat classes of people differently. Such classifications are valid unless they bear no rational relationship to a permissible state objec-

tive. Parham v. Hughes (1979) 441 U.S. 347. This Court has stated:

> It cannot seriously be argued that a statutory entitlement to sue for the wrongful death of another is itself a fundamental or constitutional right. 441 U.S. at 358, fn. 12.

Petitioners appear to apply the rational basis test in the instant petition, but boldy assert that a rational relationship is lacking. Petition, p.10. However, Petitioners can make no showing that the presumed validity of the legislative limitation on windfall damages is without a rational basis. See, Lockport v. Citizens for Community Action (1977) 430 U.S. 259, 272. A legislative determination that recovery in a wrongful death action should not include punitive damages is clearly rational. Since 1896, the Courts in California have held the law of

this state to be that punitive damages are not recoverable in an action for wrongful death. Lange v. Schoettla (1896) 115 Cal. 388; George Bay Mfg., Inc. v. Superior Court (1981) 115 CalApp3d 217; Justices v. Atchison (1977) 19 Cal3d 564; In re Paris Air Crash of March 3, 1974 (9th Cir. 1980) 622 F2d 1315. These cases have determined that the legislature's concern about the danger of excessive recoveries is rationally related to a legitimate purpose.

The legislative goal of avoiding excessive and uninsurable recoveries is implemented in California through the denial of a cause of action for punitive damages to a decedent's heirs while freely allowing proof of pecuniary losses of society, comfort and support in any amount. Code of Civil Procedure Section 377. Thus, the California statute is at least rationally

///

related to a legitimate governmental interest.

CONCLUSION

The petition for certiorari should be denied.

DATED: August 19, 1982

CRYSTAL C. SIMS
Attorney for Respondent,
MARK JAY BAKER

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 2700 North Main Street, 11th Floor, Santa Ana, California 92701.

On August 18, 1982, I served the within **OPPOSITION TO PETITION FOR CERTIORARI** on the interested parties in said action, by placing a true copy in each of two (2) sealed envelopes, with postage thereon fully prepaid, in the United States Mail at Santa Ana, California, addressed as follows:

Clerk of the Superior Court, County of Orange, 700 Civic Center Drive, West, Santa Ana, Calfiornia 92701

George L. Chelius, A Professional Law Corporation, By: Gary D. Wells, 610 Newport Center Drive, Suite 1665, Newport Beach, California 92660

I certify under penalty of perjury that the foregoing is true and correct.

Executed August 18, 1982 at Santa Ana, California.

Lu Ann Sturms

LU ANN STURMS

LEGAL AID SOCIETY OF ORANGE COUNTY
BY: CRYSTAL C. SIMS
2700 North Main Street
Santa Ana, California 92701
(714) 835-8806

Attorney for Petitioner

RECEIVED
AUG 20 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals, Petitioners, vs. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE, and MARK JAY BAKER, an Inddividual/Real Party In Interest, Respondents.	Case No. 82-125 MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COMES NOW Respondent , MARK JAY BAKER, and by this motion alleges:

Respondent MARK JAY BAKER hereby moves this Honorable Court for an order granting him leave to proceed in forma pauperis in the above-entitled action. Said motion is based on the grounds that MARK JAY BAKER does not have sufficient income to pay for the common necessaries of life and to prepay the fees and costs of defending the above entitled action.

This action arises out of a suit brought by Petitioners LEE CHANCELLOR and JEAN CHANCELLOR (hereinafter "Petitioners") for the wrongful death of their son CARL MARCUS CHANCELLOR pursuant to California Code of Civil Procedure Section 377. Petitioners' claim for punitive damages was struck upon motion of MARK JAY BAKER. Petitioners now petition this court for a writ of

certiorari alleging that the California limitation on punitive damages denies them the equal protection of the laws. As is developed by the opposition of MARK JAY BAKER filed herewith, the limitation on punitive damages is entirely consistent with the federal constitution.

Leave to proceed in forma pauperis was granted by Respondent Court on April 22, 1980. A true and correct copy of said order is attached hereto as Exhibit 1. The Legal Aid Society of Orange County was appointed by Respondent Court to represent MARK JAY BAKER on March 20, 1979. A true and correct copy of the order appointing pro bono counsel is attached hereto as Exhibit 2. Pursuant to Rules of the Supreme Court, Rule 46, Real Party In Interest MARK JAY BAKER is filing herewith his affidavit in support of this motion. A true and correct copy of the affidavit is attached hereto as Exhibit 3.

WHEREFORE, Real Party In Interest MARK JAY BAKER prays for an order granting him leave to proceed in forma pauperis in the above-entitled action.

Respectfully Submitted,

DATED: August 8, 1980

CRYSTAL C. SIMS
Attorney for MARK JAY BAKER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

ATTORNEY(S) NAME AND ADDRESS	FOR COURT USE ONLY
NANCY B. KAUFMAN and ROBERT KLOTZ, Legal Aid Society of Orange County, 2700 N. Main St., 11th Floor, Santa Ana, California 92701	FILED APR 22 1980 LEE A. BRANCH, County Clerk By _____ Deputy
ATTORNEY(S) FOR: Defendant TELEPHONE: (714) 835-8806	
LEE CHANCELLOR and JEAN CHANCELLOR, Individuals, Petitioner(s)/Plaintiff(s) vs. MARK JAY BAKER, an Individual, and DOES 1 through 10, inclusive Respondent(s)/Defendant(s) (Abbreviated Title)	CASE NUMBER 30-51-00

PETITION AND ORDER TO PROCEED IN FORMA PAUPERIS

Petitioner MARK JAY BAKER requests an order of court granting permission to proceed in this action as an indigent person and declares (type or print):

1. My address is B-98487, DVI-P.O. Box 600, Tracy, CA 95376.

2. I wish to: File an action against _____.
   Appear in Case Number 30-51-00 filed by LEE CHANCELLOR and JEAN CHANCELLOR.
   The original of the paper I wish to file is attached hereto.

3. My attorney is Nancy Kaufman. He has not been paid and will not receive any fee except as follows (explain): No exceptions.
   (Attach a copy of contingent fee contract, if any.)
   I have paid attorney (name) _____ $ _____ in connection with this matter.

4. I am an indigent person who does not have and cannot obtain the money to pay the filing fees and other legal costs without using money needed for the necessities of life. My present income and assets are:

INCOME	Husband	Wife
Gross monthly income, including welfare, unemployment, etc.	$	$
Less deductions:		
Income taxes		
Social Security		
Unemployment insurance		
Medical insurance		
Union dues, etc.		
Retirement fund		
Savings plan		
Total deductions	$	$
Net monthly income	$ 0	$

ASSETS	Husband & Wife
Savings	$
Checking	
Credit Union	
Bonds and Stocks	
Home	
Other real estate	
Furniture	
Auto or truck (Make & year):	
Other	
Total assets	$ 0

My Occupation unemployed (Incarcerated State Prisoner)
My Employer's Name _____
Address _____
Phone _____

My Spouse's Occupation _____
My Spouse's Employer's Name _____
Address _____
Phone _____

(Continued on reverse side)

My monthly expenses are:

Rent or mortgage	( )	Other:	( ) $
Food			
Clothes			
Transportation		Installment payments:	
Utilities		Creditor For	Mon. Payment / Balance
Medical, dental			$ / $
Child care			
		Total monthly expenses	$ 0

6. The names and ages of my dependents are:

Not applicable

7. My cause of action or defense arose from the following facts:

Wrongful death action seeking punitive damages.

The foregoing information is stated on information and belief and pertains to defendant MARK JAY BAKER. I make this verification for the reason that defendant is absent from Orange County.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on April 22, 1980 at Santa Ana, California.

NANCY B. KAUFMAN
(Type or print name)

(Signature of declarant)

CERTIFICATE OF COUNSEL

I, NANCY B. KAUFMAN, a member of the State Bar of California, am counsel for petitioner and am familiar with the facts and legal issues involved in the matter described in the petition. In my opinion, the contentions of my client that will be presented in this court have merit and the matter is brought in good faith and not for the purpose of delay or harassment.

I agree that I have not and shall not obtain any sum whatsoever for my services herein unless and until the filing fee due and payable in this proceeding has been paid.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 22, 1980 at Santa Ana, California.

NANCY B. KAUFMAN
(Type or print name)

(Signature of attorney)

ORDER

It appearing that petitioner MARK JAY BAKER is an indigent person who is unable to prepay the filing fees and other legal costs in this action without using money needed for necessities of life,

IT IS ORDERED that petitioner be permitted to proceed in this action in forma pauperis, provided that (1) all unpaid filing fees or other legal costs shall be deemed to be taxable costs, which shall be a lien on any money recovered by the petitioner in this action and shall immediately be paid to the clerk upon such recovery, and (2) the clerk may refuse to file any judgment, satisfaction of judgment, or dismissal in this action until such fees, etc. are fully paid.

Date APR 22 1980

WALTER W. CHARANZA
Judge

Superior Court of the State of California
County of Orange
Santa Ana, California

Chambers of
WALTER W. CHARAMZA
Judge of Superior Court

March 20, 1979

Nancy B. Kaufman
Legal Aid Society of Orange
County
1932 West 17th St.
Santa Ana, CA 92706

Re: Chancellor v. Baker
Case No. 30-51-00

Dear Ms. Kaufman,

Enclosed is a copy of the complaint in the referenced case. You are appointed as attorney to represent the defendant, Mark J. Baker. Also enclosed is a copy of the minute order extending the time to respond to the complaint to April 30, 1979.

Very truly yours,

Walter W. Charamza
Presiding Judge

WWC:c
Enclosure

cc: Gary D. Wells, P.O. Box 3295, Mission Viejo, CA 92690
James A. Baker, 118 W. Jefferson St., Tipton, Indiana 46072
Mark J. Baker, B-98487, DVI-P.O. Box 600, Tracy, CA 95376

This shall be used for intake.

Exhibit 2

CRYSTAL C. SIMS
LEGAL AID SOCIETY OF ORANGE COUNTY
2700 North Main Street, 11th Floor
Santa Ana, California 92701
(714)835-8806

Attorneys for Defendant/Respondent

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Plaintiff/Petitioner

vs

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE, and MARY JAY BAKER,

Defendant/Respondent

CASE NUMBER

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, MARK JAY BAKER, declare under penalty of perjury that the foregoing is true and correct; that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefore and that I am entitled to redress.

I further declare that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed? Yes _____ No X

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

_____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

1978(Feb. - March) Odd Jobs - Condo. Refurbishing/Approx. $400.00

(Over)

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes ___ No X
b. Rent payments, interest or dividends? Yes _____ No X
c. Pensions, annuities or life insurance payments? Yes ___ No X
d. Gifts or inheritances? Yes X No _____
e. Any other source? Yes _____ No X

If the answer to any of the above is yes, describe such source of money and state the amount received from each during the past twelve months:

$50.00 per month from parents for toiletries.

3. Do you own any cash, or do you have money in a checking or savings account? Yes ___ No X (Include any funds in prison accounts, if applicable) except what I stated in question #2 above.

If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (excluding ordinary household furnishings and clothing) Yes _____ No X

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: -0-

I understand that a false statement or answer to any questions in this declaration will subject me to penalties for perjury.

State of California.

Mark Jay Baker
Signature of Plaintiff/Petitioner
MARK JAY BAKER

County (City) of Tracy.

I, MARK JAY BAKER, declare under penalty of perjury that I have read and subscribe to the above and state that the information therein is true and correct.

Mark Jay Baker
Signature of Plaintiff/Petitioner
MARK JAY BAKER